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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,707	09/19/2003	Ralph de la Torre	MED-019	1994
36822	7590	11/29/2005		
GORDON & JACOBSON, P.C. 60 LONG RIDGE ROAD SUITE 407 STAMFORD, CT 06902			EXAMINER REIMERS, ANNETTE R	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/666,707		DE LA TORRE ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Annette R. Reimers		3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-8 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-16, 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-12, 17 and 20-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>01/26/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Election/Restrictions***

Applicant's election with traverse of invention I, claims 1-3, 5-8, 10-12, 17 and 20-21, and Species I, figures 1-12, in the reply filed on September 12, 2005 is acknowledged. The traversal is on the ground(s) that both inventions have already been searched, since the previous restriction is the same as the current restriction. This is not found persuasive, because the restriction by the previous examiner was drawn to a surgical retractor and a method for retracting tissue during surgery, whereas the current restriction is drawn to two separate surgical retractors. Therefore, the restrictions are not considered to be the same. Furthermore, on the prior office action, the previous examiner withdrew several claims from further consideration as being drawn to a nonelected species, which warranted the current restriction requirement.

Examiner further acknowledges that applicant believes that invention I, claims 1-3, 5-8, 10-12, 17 and 20-21 read on elected Species I, figures 1-12. Examiner agrees with applicant that all of the claims of invention I read on figures 1-12.

Claims 13-16 and 18-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 12, 2005.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-8, 10-12 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cope (US Patent Number 6,110,183).

Cope discloses various embodiments of a surgical retractor for use within a body cavity, comprising an elongate swivel, 30, having a first end, 32 and a second end, 34, wherein the first end of the swivel has a keyway for engaging a deployment tool (see figures 1 and 4-6) A first length of string extends from the first end of the swivel and a second length of string extends from a point substantially midway between the first end and the second end, wherein the visually distinguishable first and second lengths of string having sufficient length such that either may be pulled from outside the body cavity, such that pulling on the second length of string causes the swivel to be oriented substantially perpendicular to the second length of string, and pulling on the first length of string causes the swivel to be oriented substantially coaxial to the first length of string (see figures 13-17). The swivel is substantially cylindrical with a curved first end and the second end being substantially conical (see figures 4-6). The swivel has a surface groove, 183, extending substantially from the first end to the point

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substantially midway between the first end and the second end, the surface groove having a depth sufficient to receive the second string (see figures 20-21).

The swivel has an outer surface, an axial bore extending from the first end to the point substantially midway between the first end and the second end, and a radial bore extending from the axial bore to the surface at the point substantially midway between the first end and the second end (see figures 4-6 and 20-21). The first and second lengths of string are capable of being part of a single length of string passing through the axial and radial bores (see figures 4-6). The first and second lengths of string are joined together where the axial bore intersects the radial bore (see figure 7).

The surgical retractor device of Cope further comprises a hollow tube, 10, having a proximal end and a distal end, the first end of the swivel being removably mounted in the distal end of the tube; and a pushrod, 20, having a proximal end and a distal end, the pushrod extending through the hollow tube with the distal end of the pushrod facing the first end of the swivel (see figures 3 and 8). The pushrod is hollow and the first and second lengths of string extend through the hollow pushrod and out of the proximal end of the hollow pushrod (see figures 3 and 16-17).

Claims 1-3, 5-8, 10-12 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cragg (US Patent Number 6,315,789).

Cragg discloses various embodiments of a surgical retractor for use within a body cavity, comprising an elongate swivel, 14, having a first end, 22, and a second end, 24, wherein the first end of the swivel has a keyway for engaging a

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deployment tool (see figure 1). In addition, the first end has a reduced diameter portion, 34, adjacent to the first end (see figure 1). A first length of string extends from the first end of the swivel and a second length of string extends from a point substantially midway between the first end and the second end, wherein the visually distinguishable first and second lengths of string having sufficient length such that either may be pulled from outside the body cavity, such that pulling on the second length of string causes the swivel to be oriented substantially perpendicular to the second length of string, and pulling on the first length of string causes the swivel to be oriented substantially coaxial to the first length of string (see figures 1-6 and 9). The swivel is substantially cylindrical with a curved first end and the second end being substantially conical (see figure 1). The swivel has a surface groove, 38, extending substantially from the first end to the point substantially midway between the first end and the second end, and the surface groove having a depth sufficient to receive the second string (see figures 1-2).

The swivel has an outer surface, an axial bore extending from the first end to the point substantially midway between the first end and the second end, and a radial bore extending from the axial bore to the surface at the point substantially midway between the first end and the second end (see figures 1-2). The first and second lengths of string are capable of being part of a single length of string passing through the axial and radial bores (see figures 5-6 and 8-9). The first and second lengths of string are joined together where the axial bore intersects the radial bore (see figure 1-4).

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The surgical retractor device of Cragg further comprises a hollow tube, 18, having a proximal end and a distal end, the first end of the swivel being removably mounted in the distal end of the tube; and a pushrod, 26, having a proximal end and a distal end, the pushrod extending through the hollow tube with the distal end of the pushrod facing the first end of the swivel (see figures 1-2). The pushrod is hollow and the first and second lengths of string are capable of extending through the hollow pushrod and out of the proximal end of the hollow pushrod (see figure 3).

Claims 1-2, 5-8, 10-12, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cerier et al. (US Patent Number 5,100,417).

Cerier et al. disclose various embodiments of a surgical retractor for use within a body cavity, comprising an elongate swivel, 92, having a first end and a second end, wherein the first end of the swivel has a keyway, 40 and 42, for engaging a deployment tool (see figures 3 and 8). A first length of string extends from the first end of the swivel and a second length of string extends from a point substantially midway between the first end and the second end, wherein the visually distinguishable first and second lengths of string having sufficient length such that either is capable of being pulled from outside the body cavity, such that pulling on the second length of string would cause the swivel to be oriented substantially perpendicular to the second length of string, and pulling on the first length of string would cause the swivel to be oriented substantially coaxial to the first length of string (see figures 1 and 9). The swivel is substantially cylindrical

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with a curved first end and the second end being substantially conical (see figures 3 and 8).

The swivel has an outer surface, an axial bore extending from the first end to the point substantially midway between the first end and the second end, and a radial bore extending from the axial bore to the surface at the point substantially midway between the first end and the second end (see figures 1-3 and 8-9). The first and second lengths of string are capable of being part of a single length of string passing through the axial and radial bores (see figures 8-9). The first and second lengths of string are joined together where the axial bore intersects the radial bore (see figures 8-9).

The surgical retractor device of Cerier et al. further comprises a hollow tube, 84, having a proximal end and a distal end, the first end of the swivel being removably mounted in the distal end of the tube; and a pushrod, 96, having a proximal end and a distal end, the pushrod extending through the hollow tube with the distal end of the pushrod facing the first end of the swivel (see figures 9). The pushrod is hollow and the first and second lengths of string extend through the hollow pushrod and out of the proximal end of the hollow pushrod (see figure 9). Furthermore, the distal end of the pushrod has a key, 36, which engages the keyway (see figures 2-3 and 9).



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cope (US Patent Number 6,110,183) in view of Pedlick et al. (US Patent Number 5,961,538).

Cope discloses the claimed invention except for the first length of string and the second length of string being different colors. Pedlick et al. discloses a surgical retractor device comprising sutures of different colors and teaches "the sutures being identifiable by color such that the suture can be distinguished from other sutures of other colors" (see column 5, lines 41-43). It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Cope with the first length of string and the second length of string being different colors, in view of Pedlick et al., in order to identify/distinguish the first length of string from the second length of string.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cragg (US Patent Number 6,315,789) in view of Pedlick et al. (US Patent Number 5,961,538).

Cragg discloses the claimed invention except for the first length of string and the second length of string being different colors. Pedlick et al. discloses a

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surgical retractor device comprising sutures of different colors and teaches "the sutures being identifiable by color such that the suture can be distinguished from other sutures of other colors" (see column 5, lines 41-43). It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Cragg with the first length of string and the second length of string being different colors, in view of Pedlick et al., in order to identify/distinguish the first length of string from the second length of string.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cerier et al. (US Patent Number 5,100,417) in view of Pedlick et al. (US Patent Number 5,961,538).

Cerier et al. disclose the claimed invention except for the first length of string and the second length of string being different colors. Pedlick et al. discloses a surgical retractor device comprising sutures of different colors and teaches "the sutures being identifiable by color such that the suture can be distinguished from other sutures of other colors" (see column 5, lines 41-43). It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Cerier et al. with the first length of string and the second length of string being different colors, in view of Pedlick et al., in order to identify/distinguish the first length of string from the second length of string.

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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR



EDUARDO ROBERT  
EXAMINER